IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5564 OF 2005

The Naigaum Co-op. Housing Society Ltd.).. Petitioner

Versus

Smt.Sunanda R. Desai and others).. Respondents

Mr.Ajit Karwande for the Petitioner.

Mr. P.K. Dhakhephalkar i/b.Mr.A.P.Kocharekar for Respondent Nos.1 to 3 and 5.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 19TH OCTOBER 2005

P.C.:

. This Petition impugns the order of the Small Causes Court rejecting the application of the Petitioner to be added as a party to the proceedings. The Suit has been filed by Respondent Nos.1 to 5 against Respondent No.6 for eviction. The Petitioner Society contends that it is in fact the owner of the flat. It also claims that Respondent No.6 is its member and, therefore, any dispute between the Respondents inter se can be decided only after making the Society a party to the proceedings. A similar contention was raised by the Society in Writ Petition No.4882 of 2003 which has been decided on 18th September 2003. The learned Single Judge of this Court (Dr.Chandrachud, J.) has opined that in a Suit filed under the Rent Act, the Society is neither a necessary nor a proper party.

2. This judgment applies to the present case. The Society is claiming to be the owner of the suit premises and is setting up a title adverse to Respondent Nos.1 to 5. This issue cannot be decided by the Small Causes Court in a Suit filed under the Rent Act. The Society has already adopted several proceedings in the Co-operative Court. In my view, there is no infirmity in the order passed by the Small Causes Court discharging the Notice. The Society is neither a necessary or proper party.

3. The judgments of the Apex Court in *Razia Begum* vs. *Sahebzadi Anwar Begum and others*, **AIR 1958 SC 886** and *Amit Kumar Shaw and another* vs. *Farida Khatoon and another*, **2005 (5) ALL MR (SC) 458** have no application. The learned Advocate for the Petitioner has cited these judgments contending that in order to avoid multiplicity of litigation, it is necessary that the Society be added as a party in the proceedings before the Small Causes Court. In my view, the dispute which arises between the Society and Respondent Nos.1 to 5 is not a dispute which can be decided in this manner. Therefore, the impugned order need not be disturbed. Petition rejected.

4. The Suit is of the year 1992. There is an earlier order of 16th December 2004 passed by this Court expediting the Suit. The Trial Court is, therefore,

directed to hear and dispose of the Suit within a year from today.